

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

JAMES BAYLOUS WHITE, #16611-078	§	
	§	
VS.	§	CIVIL ACTION NO. 4:13cv166
	§	CRIMINAL ACTION NO. 4:10cr18(1)
UNITED STATES OF AMERICA	§	

ORDER OF DISMISSAL

This civil action was referred to United States Magistrate Judge Don D. Bush. The Report and Recommendation of the Magistrate Judge, which contains proposed findings of fact and recommendations for the disposition of such action, has been presented for consideration. Movant filed untimely objections. In the interest of justice, the court will conduct a *de novo* review of the objections.

In his objections, Movant fails to show that he is entitled to relief or that the Report was erroneous. Movant also complains that an evidentiary hearing was not held. However, evidentiary hearings are not required in federal habeas corpus proceedings. *See* Rule 8, *Rules Governing § 2255 Cases in the United States District Courts*; *see also McCoy v. Lynaugh*, 874 F.2d 954, 966-67 (5th Cir. 1989). Quite the contrary, “to receive a federal evidentiary hearing, a petitioner must allege facts that, if proved, would entitle him to relief.” *Wilson v. Butler*, 825 F.2d 879, 880 (5th Cir. 1987), *cert. denied*, 484 U.S. 1079 (1988). “This requirement avoids wasting federal judicial resources on the trial of frivolous habeas corpus claims.” *Id.* Movant fails to show that he was entitled to an evidentiary hearing. *See United States v. Auten*, 632 F.2d 478, 480 (5th Cir. 1980) (noting that mere conclusory allegations are not sufficient to support a request for an evidentiary hearing). As the Report shows, Movant knowingly and voluntarily pleaded guilty, and he fails to

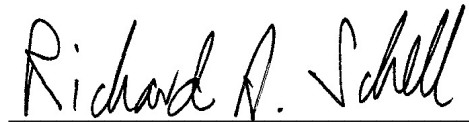
show that the outcome would have been different but for counsel's alleged ineffectiveness. *Strickland v. Washington*, 466 U.S. 668, 694, 104 S. Ct. 2052, 2068, 80 L. Ed.2d 864 (1984).

After conducting a *de novo* review of the objections raised by Movant to the Report, the court concludes that the findings and conclusions of the Magistrate Judge are correct, and adopts the same as the findings and conclusions of the court. It is accordingly

ORDERED that the motion to vacate, set aside, or correct sentence is **DENIED** and Movant's case is **DISMISSED** with prejudice. A certificate of appealability is **DENIED**. Finally, it is

ORDERED that all motions by either party not previously ruled on are hereby **DENIED**.

SIGNED this the 31st day of March, 2016.

A handwritten signature in black ink, reading "Richard A. Schell". The signature is written in a cursive, flowing style. The first name "Richard" is written in a larger, more prominent script, followed by "A." and "Schell". The signature is positioned above a horizontal line.

RICHARD A. SCHELL
UNITED STATES DISTRICT JUDGE